

**SENATE BILL**

**No. 6**

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**Introduced by Senator Hollingsworth**

February 24, 2010

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An act to repeal Section 19138 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as introduced, Hollingsworth. Tax amnesty: penalty.

Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with a specified understatement of tax, as defined, in an amount equal to 20% of that understatement, except as specified.

This bill would delete the provisions imposing that penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 19138 of the Revenue and Taxation Code  
2     is repealed.  
3     ~~19138. (a) (1) A taxpayer subject to the tax imposed under~~  
4     ~~Part 11 (commencing with Section 23001) with an understatement~~  
5     ~~of tax in excess of one million dollars (\$1,000,000) for any taxable~~  
6     ~~year shall be subject to the penalty imposed under this section.~~  
7     ~~(2) For taxpayers that are required to be included in a combined~~  
8     ~~report under Section 25101 or authorized to be included in a~~  
9     ~~combined report under Section 25101.15, the threshold amount~~  
10    ~~prescribed in paragraph (1) shall apply to the aggregate amount~~  
11    ~~of tax liability under Part 11 (commencing with Section 23001)~~

1 for all taxpayers that are required to be or authorized to be included  
2 in a combined report.

3 (b) ~~The penalty under this section shall be an amount equal to~~  
4 ~~20 percent of any understatement of tax. For purposes of this~~  
5 ~~section, “understatement of tax” means the amount by which the~~  
6 ~~tax imposed by Part 11 (commencing with Section 23001) exceeds~~  
7 ~~the amount of tax shown on an original return or shown on an~~  
8 ~~amended return filed on or before the original or extended due~~  
9 ~~date of the return for the taxable year. For any taxable year~~  
10 ~~beginning before January 1, 2008, the amount of tax paid on or~~  
11 ~~before May 31, 2009, and shown on an amended return filed on~~  
12 ~~or before May 31, 2009, shall be treated as the amount of tax shown~~  
13 ~~on an original return for purposes of this section.~~

14 (c) ~~The penalty imposed by this section shall be in addition to~~  
15 ~~any other penalty imposed under Part 11 (commencing with Section~~  
16 ~~23001) or this part.~~

17 (d) ~~Article 3 (commencing with Section 19031), relating to~~  
18 ~~deficiency assessments, shall not apply with respect to the~~  
19 ~~assessment or collection of any penalty imposed by subdivision~~  
20 ~~(a).~~

21 (e) ~~A refund or credit for any amounts paid to satisfy a penalty~~  
22 ~~imposed under this section may be allowed only on the grounds~~  
23 ~~that the amount of the penalty was not properly computed by the~~  
24 ~~Franchise Tax Board.~~

25 (f) ~~(1) No penalty shall be imposed under this section on any~~  
26 ~~understatement to the extent that the understatement is attributable~~  
27 ~~to a change in law that is enacted, promulgated, issued, or becomes~~  
28 ~~final after the earlier of either of the following dates:~~

29 (A) ~~The date the taxpayer files the return for the taxable year~~  
30 ~~for which the change is operative.~~

31 (B) ~~The extended due date for the return of the taxpayer for the~~  
32 ~~taxable year for which the change is operative.~~

33 (2) ~~For purposes of this subdivision, a “change of law” means~~  
34 ~~a statutory change or an interpretation of law or rule of law by~~  
35 ~~regulation, legal ruling of counsel, within the meaning of~~  
36 ~~subdivision (b) of Section 11340.9 of the Government Code, or a~~  
37 ~~published federal or California court decision.~~

38 (3) ~~The Franchise Tax Board shall implement this subdivision~~  
39 ~~in a reasonable manner.~~

1     ~~(g) No penalty shall be imposed under this section to the extent~~  
2     ~~that a taxpayer's understatement is attributable to the taxpayer's~~  
3     ~~reasonable reliance on written advice of the Franchise Tax Board,~~  
4     ~~but only if the written advice was a legal ruling by the Chief~~  
5     ~~Counsel, within the meaning of paragraph (1) of subdivision (a)~~  
6     ~~of Section 21012.~~

7     ~~(h) This section shall apply to each taxable year beginning on~~  
8     ~~or after January 1, 2003, for which the statute of limitations on~~  
9     ~~assessment has not expired.~~

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